**THE HON'BLE SRI JUSTSICE RAMESH RANGANATHAN**

**WRIT PETITION NO. 13496 OF 1994**

Between:

Dr.M.L.Nigam …… Petitioner

And

1. The Chairman,

Salarjung Museum Board,

Raj Bhavan, Hyderabad ……. Respondents

**THE HON'BLE SRI JUSTSICE RAMESH RANGANATHAN**

**WRIT PETITION NO. 13496 OF 1994**

**ORDER:**

The short question which arises for consideration in this writ petition is as to whether the disciplinary proceedings instituted against the erstwhile Director of the Salarjung Museum and the charge sheet issued, vide office memo dated 2.7.1994, is without jurisdiction or not?

Brief facts in this regard are that the petitioner joined the service of the Salar Jung Museum on 25.12.1964 as a Deputy Keeper, he was promoted as Director in

December, 1975. On his attaining the age of superannuation on 31.8.1991, he was given extension for a period of two years with effect from 1.9.1991. At his request that he be relieved from service w.e.f. 31.8.1992, the Board of Directors, on 30.8.1992, resolved to permit him to retire from service and accordingly the petitioner was retired from service on 31.8.1992. Subsequent to his retirement from service, the petitioner was issued charge sheet on 2.7.1994.

Sri G.Vidya Sagar, learned counsel for the petitioner would refer to Salarjung Museum Regulations, made in exercise of the powers under Section 28(1) of Salar Jung Museum Act, 1961, to contend that since the Board of Directors of the Salar Jung Museum is the competent authority to institute disciplinary proceedings against the petitioner, an erstwhile Director of the Museum, and since the charge sheet has been issued on behalf of the Chairman, institution of disciplinary proceedings by the Chairman is without jurisdiction and is therefore liable to be set aside.

Regulation 2(aa) of the Salar Jung Museum Regulations, 1962, defines 'appointing authority' in relation to any post under the Board to mean the authority to make appointments to that post under Sub-Regulation (2) of Regulation No.8. Regulation 8(2) provides that all appointments to the posts under the Board shall be made by the Board in the case of Class I (Sr) and Class I (Jr.), by the Executive Committee in the case of Class II, and by the Director of the Museum in the case of Class III and Class IV posts on the recommendation of the Selection Committee. The petitioner belongs to Class I (Sr.) Grade and as such the appointing authority, under Regulation 8(2), is the Salar Jung Museum Board. Regulation 15 relates to discipline and under Regulation 15(2), the penalties prescribed thereunder may be imposed on an employee by the appointing authority or any other authority superior thereto. Similarly under Regulation 15(1) the Board, or the appointing authority or any other authority superior thereto may place an employee under suspension.

Sri G.Vidyasagar, learned counsel for the petitioner, would submit that on a conjoint reading of Regulation 15(1)(a) and 15(2) with Regulation 8(2), it is only the appointing authority, the Board of Directors, which is alone competent to institute disciplinary proceedings against the petitioner, who is a Class I (Sr.) Officer, and since the charge memo was issued at the instance of the Chairman, the entire disciplinary proceedings initiated against the petitioner is without jurisdiction.

The petitioner retired from service on 31.8.1992 and the charge sheet was

issued under the Pensions Rules on 2.7.1994. The General Provident Fund-cum-Pension-cum-Gratuity Rules of the Salarjung Museum applies to all employees appointed to a service or post in connection with the affairs of the Salar Jung Museum Board. Rule 27 details the rights of the Chairman to withhold or withdraw pension and reads as under:

"27. Right of the Chairman to withhold or withdraw pension.

(1) The Chairman reserves to himself the right of withholding or withdrawing a pension, or pat thereof, whether permanently or for a specified period, and on ordering recovery from the pension of the whole or part of any pecuniary loss caused to the Museum, if, in any departmental or judicial procedures the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement;

Provided that the Executive Committee shall be consulted before any final orders are passed;

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be deducted below the limit specified in sub-rule (5) of Rule 52.

(2)(a) The departmental proceedings referred to in sub-rule (1) if instituted while the employee was in service whether before his retirement or during his re-employment, shall after the final retirement of the employee, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the employee had continued in service.

Provided that where the departmental proceedings are instituted by an authority subordinate to the Chairman, that authority shall submit a repot recording its findings to the Chairman.

(b) The departmental proceedings, if not instituted while the employee was in service, whether before his retirement or during his re-employment

i. shall not be instituted save with the sanction of the Chairman

ii. shall not be in respect of any event which took place more than four years before such institution, and

iii. shall be conducted by such authority and in such place as the Chairman may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the employee during his service.

(3) No judicial proceedings, if not instituted while the employee was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose, or in respect of an event which took place, more than four years before such institution.

(4) In the case of an employee who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial

proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in rule 67 or shall be sanctioned."

It is clear from Rule 27(2)(b) that departmental proceedings, if not instituted while the employee was in service, shall not be instituted save with the sanction of the Chairman and under clause (iii) of Rule 27(2)(b), departmental proceedings shall be conducted by such authority and in such place as the Chairman may direct. Thus, under the Pension Rules, departmental proceedings are required to be instituted with the sanction of the Chairman and since the departmental proceedings instituted against the petitioner is under the Pension Rules, the Chairman is undoubtedly the competent authority, to sanction institution of disciplinary proceedings against the petitioner, a retired employee.

This controversy, however, would not detain us any further, inasmuch as Sri R.S.Murthy, learned Standing Counsel would place, before this Court, the minutes of the meeting of the Salar Jung Museum Board held on 1.12.1993 wherein item 29 related to release of retirement benefits in respect of the petitioner. The resolution of the Board in this regard reads as under:

"After going through the advice of the Central Vigilance Commission and after discussing various findings from the Fact Finding Committed Report, the Board decided to initiate major penalty disciplinary proceedings against Mr.M.L.Nigam as envisaged in Rule 10 of C.C.S.(Pension) Rules. The Board also resolved that the Central Vigilance Commissioner of Departmental Enquiries be approached to conduct the Enquiry in case Dr.Nigam seeks oral enquiry. The Director, Salar Jung Museum may pepare the draft Chart Sheet in consultation with Chief Vigilance Officer of the Department of Culture and obtain the approval of Chairman, Salar Jung Museum Board for serving on Dr.Nigam to avoid any delay in the matter. The Board also approved the appointment of Dr.I.K.Sarma, Director, Salar Jung Museum to be the Presenting Officer in this case.

The Board approved the appointment of Sri K.Jagannadha Rao, Senior Central Government Standing Counsel to defend the Case in the interest of the Board and authorize him to file necessary appeal against the petition of Dr.M.L.Nigam. The Board also decided to dispense with the services of the present Standing Counsel Sri G.Parameswara Rao with immediate effect. The Board further resolved that Sri K.Jagannadha Rao, Senior Standing Counsel for Central Government be approached for his appointment as the Standing Counsel for the Museum and negotiate a fixed retainer. "

It is clear therefrom, that the Board decided to initiate major penalty proceedings against the petitioner. It also resolved that the Central Vigilance Commissioner of Departmental Enquiries be approached to conduct enquiry. It directed the Director,

Salar Jung Museum to prepare a draft charge sheet in consultation with the Chief Vigilance Officer of the Department of Culture and obtain approval of the Chairman, Salar Jung Museum for serving it on the petitioner. It is thus clear that the decision to initiate disciplinary proceedings against the petitioner was taken by the Salar Jung Museum Board, which, even according to the petitioner, is the competent authority to initiate disciplinary proceedings against him.

In view of the fact that the disciplinary proceedings were initiated at the instance of the Salar Jung Museum Board, it cannot be said that the action of the authorities in commencing disciplinary proceedings against the petitioner was without jurisdiction. The only ground raised in this writ petition, by Sri G.Vidya Sagar, learned counsel for the petitioner, must therefore fail.

Sri G.Vidyasagar, learned counsel for the petitioner, would, however, submit that in view of the orders of this Court rejecting the petitioner's contention with regards lack of jurisdiction, the petitioner be permitted to file his explanation to the charge sheet, if not, already filed. In case, the petitioner files his explanation to the charge sheet within one month from the date of receipt of a copy of this order, the explanation submitted by him to the charge sheet shall be entertained and necessary action shall be taken thereafter in accordance with law.

The writ petition is dismissed. However, in the circumstances, without costs.

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